IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Arbitration Case No.272 of 2006

Date of Decision: May 7, 2007

Narinder Kumar Gupta **....Petitioner**

through Mr.R.K.Jain , Advocate

v.

State of Haryana and others **....Respondents**

through Mr.Randhir Singh, Additional Advocate General, Haryana

CORAM: HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

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VIJENDER JAIN, CHIEF JUSTICE (ORAL)

This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, `the Act') has been filed by the petitioner for appointment of a named Arbitrator under Clause 25-A of the agreement.

Briefly stating, the facts of the case are that a petition under Section 11(6) of the Act for appointment of an Arbitrator was filed on 17.2.2000 which was listed before the Civil Judge (Sr.Division), Chandigarh. The Civil Judge dismissed the application of the petitioner on the ground that final payment was made to the petitioner on 1.8.1996 but the application for appointment of Arbitrator was moved on 18.2.1997 and the Civil Judge held that the petition was time barred. Aggrieved of order dated 18.2.2002, the petitioner filed a review application before the Civil Judge. However, that review application was

transferred to the Court of learned District Judge, Chandigarh in view of notification dated 24.9.2003 issued by this Court conferring jurisdiction upon the learned District Judges to exercise the powers under Section 11(6) of the Act, where the amount in dispute is less than Rs.25 lacs. The said review application was disposed of by the learned District Judge in view of the judgment in **Konkan Railway Corporation Ltd. and others v. Mehul Construction Co.**, 2000(3) Arbitration Law Reporter 162 directing the petitioner to avail of alternative remedy of seeking a writ of mandamus. In the meanwhile, the judgment in the case of **SBP & Co. v. Patel Engineering Ltd. and another**, (2005)8 SCC 618 was rendered by the Supreme Court and the petitioner has filed the present petition under Section 11 of the Act, inter alia praying for appointment of an Arbitrator.

A bare perusal of the judgment of the Civil Judge depicts that the Civil Judge in his order himself has admitted that payment of Rs.2 lacs was made on 1.8.1996 and the payment of Rs.3,44,133/- was made to the petitioner by the respondents on 28.8.1996. Theses facts are admitted between the parties. It is also not in dispute that the petitioner invoked arbitration Clause No.25-A vide letter dated 18.2.1997, which according to the respondents had been received on 28.2.1997. The period of six months, as stipulated under Section 25-A of the agreement had not expired, when the request for appointment of an Arbitrator was made on 18.2.1997. However, if the date of invocation is taken from 28.2.1997 on which date the letter was allegedly received by the respondents, even then the said period of six months did not stand expired, therefore, the plea of the respondents is without any merit. Consequently, in terms of the arbitration clause, the respondents are directed to appoint the Arbitrator to adjudicate upon all the dispute between the parties.

The petition stands disposed of.

(VIJENDER JAIN)
CHIEF JUSTICE

May 7, 2007

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